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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,436	01/25/2002	Atanas Stoyanov	064754-0012	9655
33401	7590	02/14/2008	EXAMINER	
MCDERMOTT WILL & EMERY LLP			CHANDLER, SARA M	
2049 CENTURY PARK EAST				
38th Floor			ART UNIT	PAPER NUMBER
LOS ANGELES, CA 90067-3208			3693	
			MAIL DATE	DELIVERY MODE
			02/14/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/057,436	STOYANOV ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	SARA CHANDLER	3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 December 2007.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 4-6 and 45-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 4-6 and 45-47 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Response to Amendment***

This Office Action is responsive to Applicant's arguments and request for reconsideration of application 10/057,436 (01/25/02) filed on 12/28/07.

### ***Claim Interpretation***

1. In determining patentability of an invention over the prior art, all claim limitations have been considered and interpreted as broadly as their terms reasonably allow. See MPEP § 2111.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Pruter*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). See MPEP § 2111.

2. All claim limitations have been considered. Additionally, all words in the claims have been considered in judging the patentability of the claims against the prior art. See MPEP 2106 II C. The following language is interpreted as not further limiting the scope of the claimed invention. See MPEP 2106 II C.

Language in a method claim that states only the intended use or intended result (e.g., "for \_\_\_\_\_"), but the expression does not result in a manipulative difference in the steps of the claim. Language in a system claim that states only the intended use or intended result (e.g., "for \_\_\_\_\_"), but does not result in a

structural difference between the claimed invention and the prior art. In other words, if the prior art structure is capable of performing the intended use, then it meets the claim.

Claim limitations that contain statement(s) such as “*if, may, might, can could*”, as optional language. As matter of linguistic precision, optional claim elements do not narrow claim limitations, since they can always be omitted.

Claim limitations that contain statement(s) such as “*wherein, whereby*”, that fail to further define the steps or acts to be performed in method claims or the discrete physical structure required of system claims.

USPTO personnel should begin claim analysis by identifying and evaluating each claim limitation. For processes, the claim limitations will define steps or acts to be performed. For products, the claim limitations will define discrete physical structures or materials. Product claims are claims that are directed to either machines, manufactures or compositions of matter. See MPEP § 2106 II C.

The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

- (A) statements of intended use or field of use,
- (B) “adapted to” or “adapted for” clauses,
- (C) “wherein” clauses, or
- (D) “whereby” clauses.

See MPEP § 2106 II C.

3. Independent claims are examined together, since they are not patentable distinct. If applicant expressly states on the record that two or more independent and distinct

inventions are claimed in a single application, the Examiner may require the applicant to elect an invention to which the claims will be restricted.

***Oath/Declaration***

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

Each named inventor has not signed the Oath or Declaration.

Applicant has not given a post office address anywhere in the application papers as required by 37 CFR 1.33(a), which was in effect at the time of filing of the oath or declaration. A statement over applicant's signature providing a complete post office address is required.

***Claim Objections***

Claims 4-6 and 45-47 are objected to because of the following informalities:  
Claim 4 recites, “comparing the calculated profit amounts; and” Should this be -- ranking each of the plurality of retail finance programs in order of highest to lowest calculated profit amount; and -- ?

Claim 4 recites, “identifying which of the plurality of retail finance programs has the highest calculated profit amount.” Should this be – selecting the retail finance program that generates the highest calculated profit amount; and displaying a report of the selected retail finance program to a user of the computer system --?

Claims 5 and 6: Note claims 5 and 6 should incorporate changes comparable to claims 4 above but accounting for their respective statutory classes.

Re Claims 4-6,

Claim 4 recites, "A method for identifying which of selecting, from a plurality of retail finance programs generates a highest calculated profit amount for a particular vehicle, the method comprising:" Should this be -- A method for selecting which of a plurality of retail finance programs generates a highest calculated profit amount for a particular vehicle, the method comprising: -- ?

Claim 5 recites, "A computer system comprising:" Should this be -- A computer system for selecting which of a plurality of retail finance programs generates a highest calculated profit amount for a particular vehicle, the system comprising: -- ?

Claims 6 recites, "Computer readable storage media containing software which, when loaded on a computer and executed, enables the following steps to occur:" Should this be -- Computer readable storage media containing software for selecting which of a plurality of retail finance programs generates a highest calculated profit amount for a vehicle which, when loaded on a computer and executed, performs the steps of: -- ? It seems like stronger language is needed.

Alternatively, if the desired result is "displaying a report" should that language be in the preamble of claims 4-6?

Re Claim 6: In the amendment filed 12/28/07, claim 6 appears to deviate from the claims 4 and 5 in some notable ways. Are these differences intentional?

"the computer receives information about the vehicle" never occurs. How can a proper vehicle finance program occur if this step never happens?

Claim 6 recites, "and the computer reports which of the plurality of retail finance programs has the highest calculated profit amount." Claims 4 and 5 are merely "identifying" a retail finance program.

Since the preamble of claim 6 refers to steps, should the limitations be recited as steps? E.g., Should "the computer receive" be -- receiving --; "the computer accesses" be -- accessing -- etc.?

Re Claim 47: Should "The computer readable storage media of claim 4" be -- The computer readable storage media of claim 6. -- Note that claim 47 is currently an improper dependent claims because claim 4 is a method claim.

Re 45-47: The language is awkward regarding the statutory class of the subject matter, the relevant structural components and the steps performed.

NOTE: The claim language referred to in the claim objections and rejections is not intended as suggested claim language and use of this specific language is not required. Other language that resolves the underlying clarity, indefiniteness problems raised is acceptable. As, always applicant should review amendments to ensure that the claims are consistent with the specification and do not introduce new matter.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 4-6 and 45-47** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re Claims 4-6 and 45-47: The claims recite steps such as: "receiving financial data associated with the customer;" "receiving a target monthly payment amount;" "receiving information about the vehicle;" and "receiving an amount of cash available."

It seems as though there needs to be some language in the claims making reference these being inputs/variables that are entered into the claimed invention. E.g., For example, can a computer readable media as recited in claim 47 literally perform the step of "receiving an amount of cash available."

Claim 5 recites,"

Claims 4-6 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, essential steps and/or essential structural cooperative relationships of elements such omission amounting to a gap between the elements, steps and/or necessary structural connections . See MPEP § 2172.01. The omitted elements, steps and/or structural cooperative relationships are:.

Re Claims 4-6, although "the highest calculated profit amount" has antecedent in the preamble, how does the claimed invention recited in the body of the claim arrive at the point of making that determination? It seems like there needs to be a process of ordering, ranking etc. that must happen first.

Re Claims 4-6: The step of “calculating a profit amount....” only handles the financial data and the target monthly payment as constraints. Is the information about the vehicle also a constraint?

Re Clams 4-6: Merely “identifying” the highest calculated profit amount does not appear to produce the type of result necessary. Why is this done? Will the computer select this value? Will a report be generating suggesting this value to a given user?

Re Clam 5, the preamble of the claim suggests that it is drawn to a system. The way the invention is claimed however, essential structural components of the system have not been claimed (e.g., database).

Some structural components have been claimed w/intended use recitations (e.g., “a peripheral device for”, “a computer display for”) yet what their particular role is and how they operate in combination with other structural components is unclear.

Similarly, the role of the computer processor which seems to be essential is unclear.

The required structural components, their role and how they work together in the claimed invention should be clarified. Where can support for these features be found in applicant’s specification?

Does the database (store information about a plurality of retail finance programs)?

Does the peripheral input device (receive financial data associated with the customer; receive a target monthly payment amount; receive information about the vehicle)?

Does the computer processor (access the database storing information about a plurality of retail finance programs; calculate a profit amount for each of the plurality of retail finance programs for the vehicle, said calculating comprising handling the financial data and the target monthly payment amount as constraints; rank each of the plurality of retail finance programs in order of highest to lowest calculated profit amount; and select the retail finance program that generates the highest calculated profit amount)?

Does the computer display device (display a report of the selected retail finance program to a user of the computer system)?

NOTE: The claim language referred to in the claim objections and rejections is not intended as suggested claim language and use of this specific language is not required. Other language that resolves the underlying clarity, indefiniteness problems raised is acceptable. As, always applicant should review amendments to ensure that the claims are consistent with the specification and do not introduce new matter.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 4-6 and 45-47** are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker, US Pub. No. 2002/0107765 in view of Sheets, US Pub. No. 2001/0049653.

**Re Claims 4-6 and 45-47:** Walker discloses a method/system/computer readable storage media containing software for identifying which of a plurality of retail finance programs generates a highest calculated profit amount for a particular vehicle, the method/system/computer readable media containing software comprising: receiving financial data associated with the customer (Walker, abstract, Figs. 1-5, [0001] thru [0094]); receiving information about the vehicle (Walker, abstract, Figs. 1-5, [0001] thru [0094]) accessing a database stored in a computer system, the database comprising information about a plurality of retail finance programs (Walker, abstract, Figs. 1-5, [0001] thru [0094]); calculating a profit amount for each of the plurality of retail finance programs for the vehicle, said calculating comprising handling the financial data as a constraint (Walker, abstract, Figs. 1-5, [0001] thru [0094]); comparing the calculated profit amounts (Walker, abstract, Figs. 1-5, [0001] thru [0094]); identifying which of the plurality of retail finance programs has the highest calculated profit amount (Walker, abstract, Figs. 1-5, [0001] thru [0094]); and

reporting which of the plurality of retail finance programs has the highest calculated profit amount (Walker, abstract, Figs. 1-5, [0001] thru [0094]).

Walker fails to explicitly disclose:

receiving a target monthly payment amount; and  
calculating a profit amount for each of the plurality of retail finance programs, said calculating comprising handling the financial data and the target monthly payment amount as constraints.

Sheets discloses:

receiving a target monthly payment amount (Sheets, abstract, Figs. 1-5; [0001] thru [0005]; [0008] thru [0014]; [0017] [0018] [0027] [0031] [0032] [0035] [0036] [0042] [0044] [0051]); and

calculating a profit amount for each of the plurality of retail finance programs, said calculating comprising handling the financial data and the target monthly payment amount as constraints (Sheets, abstract, Figs. 1-5; [0001] thru [0005]; [0008] thru [0014]; [0017] [0018] [0027] [0031] [0032] [0035] [0036] [0042] [0044] [0051]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Walker by adopting the teachings of Sheets to provide a method/system/computer readable storage media containing softer further comprising: receiving a target monthly payment amount; and calculating a profit amount for each of the plurality of retail finance programs, said calculating comprising handling the financial data and the target monthly payment amount as constraints.

As suggested by Sheets, one would have been motivated to provide customers with information they want and need; allow them to save time by focusing on cars they can afford; and provide information to customers quickly and efficiently.

***Response to Arguments***

**Oath**

Applicant's arguments have been fully considered but they are not persuasive.

A new oath/declaration has not been received.

**Objections/ 112 Rejections**

Objections/Rejections resolved have been withdrawn. Please see discussion supra regarding objections/rejections raised by the pending claim amendments.

**102**

In light of the cancellation of the respective claims, the rejection is moot.

**103**

Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues the prior art fails to explicitly disclose “receiving a target monthly payment amount;” and “calculating a profit amount for each of the plurality of retail finance programs for the vehicle, said calculating comprising handling the financial data and the target monthly payment amount as constraints;”

Walker discloses a system, method and computer readable instructions useful in identifying which of a plurality of retail finance programs generates a highest calculated profit amount of a particular vehicle.

Embodiments of the present invention relate to financial methods and systems that **allow an automobile dealership to compare and contrast the various**

**types of financing, leasing and insurance options they might provide a vehicle consumer.** The system is designed to access, transmit, process and approve electronic loan, lease and insurance applications from the dealership. (Walker, [0032])

Walker further teaches that inputs are received by the system including financial data associated with a customer and information about the vehicle.

As discussed above, the order is preferably received through the internet by a consumer that has made an on-line request to purchase a particular vehicle. In practice, the consumer typically fills out an online HTML form that requests data on the type of vehicle being purchased. Additionally, **the consumer preferably enters credit data, such as their current salary, debts and other similar data relating to their credit worthiness.** (Walker, [0063])

The process 100 then moves to a state 108 wherein **the system receives vehicle purchase information from the dealership. This information is preferably entered by a finance specialist at the dealership and relates to price, make, model and other information pertaining to the vehicle being purchased by the consumer.** It should be noted that this step can be performed very soon after the dealership receives the vehicle order, or days or weeks later when the consumer goes to the dealership to work with a dealership finance specialist. (Walker, [0064])

After the inputs are received, Walker teaches that profit amounts for each retail finance program are calculated, compared and the retail finance program generating the highest calculated profit amount for a particular vehicle is identified.

Each finance option is available to the consumer, and is preferably based on their credit history and income level. In addition, in one embodiment, **each finance option is ranked on the display screen in order of how much revenue it would bring to the dealership.** In another embodiment, the system uses different colors on the screen to indicate to the finance specialist the most advantageous loan, lease or insurance program for the dealership or the consumer. (Walker, [0065])

Walker suggests that it is important for dealers to recognize the advantages of particular retail finance programs from the perspective of both the customer and the

dealership. (Walker, [0004] [0006]). Thus, Walker provides (a) a base invention similar to the claimed invention (i.e., identifies which of a plurality of retail finance programs generates a highest calculated profit amount for a particular vehicle) (b) is ready for improvement (i.e., capable of receiving different inputs for use in the generating the highest calculated profit amount) and (c) suggests a need for such an improvement (i.e., identifying the best options from both the customer and the dealerships perspective).

Sheets improves upon the teachings of Walker by suggesting that a target monthly payment amount is an input that should be included in the evaluation of the plurality of alternative retail finance programs. It necessarily flows that if the target monthly payment can be an additional input into the system, the input is another constraint that could be used in the evaluation of a plurality of alternative retail finance programs (i.e., to identify which of a plurality of retail finance programs generates a highest calculated profit amount of a particular vehicle).

**An important factor in matching customers with products and creating a vehicles available report will generally be the customer's desired price or payment range.** The system has the ability to calculate monthly payments and/or lease payments on any product in inventory by using calculations based on multiple pre set defaults. In other words, **the system has the ability to calculate variables such as the tax, rebates, and program eligibility discounts and determine a monthly payment for each automobile in inventory based on the automobiles gross sales price and the customer's down payment, trade-in value, and available credit.** (Sheets, [0036])

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Walker by adopting the teachings of Sheets to provide a method/system/computer readable storage media containing

software for identifying which of a plurality of retail finance programs generates a highest calculated profit amount for a particular vehicle, the method/system/computer readable media containing software further comprising: receiving a target monthly payment amount; and calculating a profit amount for each of the plurality of retail finance programs for the vehicle, said calculating comprising handling the financial data and the target monthly payment amount as constraints.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

As suggested by Sheets, one would have been motivated to provide customers with information they want and need; allow them to save time by focusing on cars they can afford; and provide information to customers quickly and efficiently.

Also, a retail finance program that a customer does not want, cannot afford and/or cannot qualify for would not be beneficial to either the customer and/or dealership. Thus, a target monthly payment amount is a practical consideration in determining which of the retail finance programs available to the customer will provide the highest calculated profit amount for a vehicle.

Claims 4-6 and 45-47 use a known technique to a known method/system/computer readable medium ready for improvement to yield predictable results. Thus, the claimed subject matter likely would have been obvious under KSR. KSR, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARA CHANDLER whose telephone number is (571)272-1186. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JAGDISH PATEL/  
Primary Examiner, Art Unit 3693  
SMC